

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

Index No.: _____/19

DANIEL SMITH,

Plaintiff,

-against -

DIOCESE OF BUFFALO and ST. JOSEPH'S
CHURCH,

Defendants.

X

Plaintiffs designate
ERIE COUNTY
as place of trial.The basis of venue is
Defendants principal place
of business.Plaintiff's residence
address is
5780 Petluma Hill Rd.
Santa Rosa, CA 95404SUMMONS

X

To the above-named defendants:

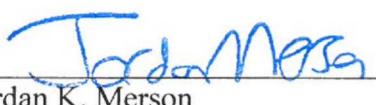
YOU ARE HEREBY SUMMONED to answer the
complaint in this action and to serve a copy of your answer or, if the complaint is not served
with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20
days after the service of this summons, exclusive of the day of service (or within 30 days after
the service is complete if this summons is not personally delivered to you within the State of
New York): and in case your failure to appear or answer, judgement will be taken for the
relief demanded herein.

**A COPY OF THIS SUMMONS WAS FILED WITH THE CLERK OF THE COURT,
ERIE COUNTY ON _____ IN COMPLIANCE WITH CPLR §§305(a) AND
306(a).**

Dated: New York, New York
August 14, 2019

MERSON LAW, PLLC

By:



Jordan K. Merson
Attorneys for Plaintiff
150 East 58th Street 34th Floor
New York, New York 10155
(212) 603-9100

TO:

DIOCESE OF BUFFALO

795 Main Street
Buffalo, NY 14203

ST. JOSEPH'S CHURCH

145 E. Main Street
Fredonia, NY 14063

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE**

Index No.: _____/19

-----X

DANIEL SMITH,

Plaintiff,

-against -

**VERIFIED
COMPLAINT**

**DIOCESE OF BUFFALO and ST. JOSEPH'S
CHURCH,**

Defendants.

-----X

Plaintiff(s), above named, complaining of the defendants, by **MERSON LAW,
PLLC.**, respectfully allege(s):

NATURE OF THE CLAIM

1. This is a case of plaintiff Daniel Smith who was sexually abused as a child by Father Edward J. Walker ("Walker") at and of St Joseph's Church ("St. Joseph's") and Diocese of Buffalo ("Diocese").
2. Walker was an agent, servant and/or employee of St. Joseph's which operated under the exclusive control of the Diocese. Walker was known among the community and the children as a sexual predator.
3. Despite the Diocese and/or St. Joseph's knowledge that Walker sexually abused children and/or had the propensity to sexually abuse children, the Diocese and/or St. Joseph's allowed the Walker unfettered access to children, including on Diocese and/or St. Joseph's premises, without supervision.

4. In approximately 1953 and continuing until 1963, Walker, while under the scope of employment with the Diocese and St. Joseph's Church and while acting on behalf of the Diocese and/or St. Joseph's Church, would sexually abuse Plaintiff, then approximately between twelve and twenty-two years old, weekly by forcing plaintiff to sit on his lap so that he could fondle plaintiff's penis and testicles, and manually stimulating plaintiff's penis and making plaintiff inform him when he was going to ejaculate.
5. The sexual abuse occurred in St. Joseph's and other venues.
6. Plaintiff brings this lawsuit to recover for the emotional and physical suffering he endured because of the negligence of the Diocese of Buffalo and/or St. Joseph's Church and to make sure no other child is forced to suffer the abuse and physical and mental trauma she felt and continues to feel.

PARTIES

7. At all times herein mentioned defendant **DIOCESE OF BUFFALO** was a not for profit corporation incorporated in the state of New York and by virtue of the laws of the State of New York.
8. At all times herein mentioned, defendant **DIOCESE OF BUFFALO** was located at 795 Main Street, Buffalo, New York 14203..
9. At all times herein mentioned, Walker was an agent, servant and/or employee operating under the direction and control of defendant **DIOCESE OF BUFFALO**, and its agents, servants and/or employees.
10. At all times herein mentioned **ST. JOSEPH'S CHURCH** was a not for profit corporation incorporated in the state of New York and by virtue of the laws of the State of New York.

11. At all times herein mentioned, defendant **ST. JOSEPH'S CHURCH** was located at 145 E. Main Street, Fredonia, New York 14063.
12. At all times herein mentioned, Walker was an agent, servant and/or employee operating under the direction and control of defendant **ST. JOSEPH'S CHURCH**, and its agents, servants and/or employees.
13. At all times herein mentioned, defendants **DIOCESE OF BUFFALO** and **ST. JOSEPH'S CHURCH** were agents, servants, employees and/or alter egos of each other.
14. At all times herein mentioned, defendants **DIOCESE OF BUFFALO** operated and controlled defendant **ST. JOSEPH'S CHURCH**.

FACTS OF THE CASE

15. Defendants **DIOCESE OF BUFFALO** and/or **ST. JOSEPH'S CHURCH**'s negligence and recklessness caused Walker to have access to children, including on Diocese and/or St. Joseph's property, without supervision despite their knowledge that Walker sexually abused children and/or had the propensity to sexually abuse children and therefore are responsible for the injuries that Plaintiff incurred because but for Defendants **DIOCESE OF BUFFALO** and/or **ST. JOSEPH'S CHURCH**'s negligence, Plaintiff would not have suffered the mental and physical anguish inflicted by Walker. Defendants' gross negligence, reckless, wanton, and/or willful conduct supports punitive liability.
16. Walker sexually assaulted Plaintiff and many other children of St. Joseph's. Nonetheless, defendant **DIOCESE OF BUFFALO** and/or defendant **ST. JOSEPH'S CHURCH** failed to remove Walker from his position or to take any steps to keep the

dangerous predator away from children. In fact, the Diocese and/or St. Joseph's continued to allow, encourage and/or permit Walker to have unfettered access to children, including on Diocese premises.

17. After plaintiff's father died in or about 1953 and continuing thereafter, Walker, using his position of power and authority provided to him by the Diocese and St. Joseph's, manipulated Plaintiff's mother into trusting him to be alone with plaintiff and believing that he would be a good mentor for plaintiff.
18. In approximately 1953 and continuing through approximately 1963, Walker would sexually abuse Plaintiff weekly by forcing plaintiff to sit on his lap, fondling his penis and testicles, manually stimulating plaintiff's penis and demanding plaintiff tell him when plaintiff was going to ejaculate. The abuse occurred from the time plaintiff was twelve years old until he was twenty-two.
19. As such, Plaintiff suffered catastrophic and lifelong injuries as a result of defendants **DIOCESE OF BUFFALO** and/or **ST. JOSEPH'S CHURCH**'s negligence in undertaking a duty, including but not limited to in locis parentis, in failing to protect the children of its parishes and of its community safe from Walker despite the Diocese, and/or St. Joseph's having knowledge that Walker abused and/or sexually abused children and/or had the propensity to abuse and/or sexually abuse children, and/or allowing Walker to continue to have his position of authority and power, with unfettered access to children, as well as the diocese failed to adequately supervise Walker.

AS FOR A FIRST CAUSE OF ACTION FOR NEGLIGENCE

AS FOR THE DIOCESE OF BUFFALO

20. Plaintiffs repeat, reiterate and reallege each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 19., inclusive, with the same force and effect as if hereinafter set forth at length.
21. At all times mentioned herein, defendant **DIOCESE OF BUFFALO** owed a duty of care, including but not limited to in locis parentis, to keep the young patrons and children of its parishes safe from the abuse and/or sexual abuse by its agents, servants and or employees under its supervision and control, including on company premises, that ultimately befell the plaintiff, and they had a duty to supervise Walker.
22. At all times mentioned herein, defendant **DIOCESE OF BUFFALO** and/or its agents, servants and/or employees breached the above-stated duty in a negligent, reckless, willful and wanton manner, and caused Plaintiff to be sexually assaulted.
23. As a result of the negligence of defendant **DIOCESE OF BUFFALO** and/or its agents, servants and/or employees, plaintiff was caused serious personal injuries, emotional distress, mental pain and suffering, mental anguish and/or physical manifestations thereof, and other losses, all of which have not as of yet been ascertained.
24. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.
25. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.
26. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
27. This action falls within exceptions to Article 16 of the C.P.L.R.

AS AND FOR A SECOND CAUSE OF ACTION FOR NEGLIGENCE

AS FOR ST. JOSEPH'S CHURCH

28. Plaintiffs repeat, reiterate and reallege each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 27., inclusive, with the same force and effect as if hereinafter set forth at length.
29. At all times mentioned herein, defendant **ST. JOSEPH'S CHURCH** owed a duty of care, including but not limited to in locis parentis, to keep the young patrons of its parish safe from the abuse and/or sexual abuse by its agents, servants and or employees under its supervision and control, including on company premises, that ultimately befell the plaintiff, and they had a duty to supervise Walker.
30. At all times mentioned herein, defendant **ST. JOSEPH'S CHURCH** and/or its agents, servants and/or employees breached the above-stated duty in a negligent, reckless, willful and wanton manner, and caused Plaintiff to be sexually assaulted.
31. As a result of the negligence of defendant **ST. JOSEPH'S CHURCH** and/or its agents, servants and/or employees, plaintiff was caused serious personal injuries, emotional distress, mental pain and suffering, mental anguish and/or physical manifestations thereof, and other losses, all of which have not as of yet been ascertained.
32. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.
33. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.
34. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
35. This action falls within exceptions to Article 16 of the C.P.L.R.

AS AND FOR A THIRD CAUSE OF ACTION FOR NEGLIGENT HIRING,

RETENTION AND SUPERVISION AS TO DIOCESE OF BUFFALO

36. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 35., inclusive, with the same force and effect as if hereinafter set forth at length.
37. Defendant **DIOCESE OF BUFFALO** had a duty to supervise and prevent known risks of harm to the children and students of its parishes by its agents, servants and/or employees.
38. Defendant was negligent in hiring, retaining and supervising their personnel, such as Walker, who was careless, unskillful, negligent, reckless and acted in a willful and wanton manner in not possessing the requisite knowledge and skill of church officials and other church supervisors who should have properly been supervising the agents, servants and/or employees and church officials to ensure the safety of the children of its parishes.
39. Defendant **DIOCESE OF BUFFALO** knew or should have known Walker sexually abused and/or had the propensity to sexually abuse children and did nothing to stop it.
40. As a result of such negligent hiring, supervising and retention, Plaintiff was caused to suffer serious personal injuries, emotional distress, conscious pain and suffering, mental anguish and/or physical manifestations thereof, and other losses, all of which have not as of yet been ascertained.
41. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.

42. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.
43. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
44. This action falls within exceptions to Article 16 of the C.P.L.R.

AS AND FOR A FOURTH CAUSE OF ACTION FOR NEGLIGENT HIRING,

RETENTION AND SUPERVISION AS TO ST. JOSEPH'S CHURCH

45. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 44., inclusive, with the same force and effect as if hereinafter set forth at length.
46. Defendant **ST. JOSEPH'S CHURCH** had a duty to supervise and prevent known risks of harm to the children of its parishes by its agents, servants and/or employees.
47. Defendant was negligent in hiring, retaining and supervising their personnel, such as Walker, who was careless, unskillful, negligent, reckless and acted in a willful and wanton manner in not possessing the requisite knowledge and skill of church officials and other church supervisors who should have properly been supervising the agents, servants and/or employees and church officials to ensure the safety of the children of its church.
48. Defendant **ST. JOSEPH'S CHURCH** knew or should have known Walker sexually abused and/or had the propensity to sexually abuse children and did nothing to stop it.
49. As a result of such negligent hiring, supervising and retention, Plaintiff was caused to suffer serious personal injuries, emotional distress, conscious pain and suffering, mental

anguish and/or physical manifestations thereof, and other losses, all of which have not as of yet been ascertained.

50. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.
51. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.
52. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
53. This action falls within exceptions to Article 16 of the C.P.L.R.

AS AND FOR THE FIFTH CAUSE OF ACTION FOR NEGLIGENT INFILCTION

OF EMOTIONAL DISTRESS AS TO DIOCESE OF BUFFALO

54. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 53., inclusive, with the same force and effect as if herein set forth at length.
55. Defendant **DIOCESE OF BUFFALO** and their agents, servants and/or employees, knew or reasonably should have known that the failure to properly advise, supervise and hire Walker, the agent, servant and/or employee who sexually abused Plaintiff, would and did proximately result in physical and emotional distress to Plaintiff.
56. Defendant **DIOCESE OF BUFFALO** and their agents, servants and/or employees knew or reasonably should have known that the sexual abuse and other improper conduct would and did proximately result in physical and emotional distress to Plaintiff.
57. Defendant has the power, ability, authority and duty to intervene with and/or stop the improper conduct that resulted in Plaintiff being sexually abused by Walker.

58. Despite said knowledge, power and duty, defendant negligently failed to act so as to stop, prevent, and prohibit the improper conduct that resulted in Walker sexually abusing Plaintiff.
59. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.
60. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.
61. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
62. This action falls within exceptions to Article 16 of the C.P.L.R.

AS AND FOR THE SIXTH CAUSE OF ACTION FOR NEGLIGENT INFILCTION
OF EMOTIONAL DISTRESS AS TO ST. JOSEPH'S CHURCH

63. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 62., inclusive, with the same force and effect as if herein set forth at length.
64. Defendant **ST. JOSEPH'S CHURCH** and their agents, servants and/or employees, knew or reasonably should have known that the failure to properly advise, supervise and hire Walker, the agent, servant and/or employee who sexually abused Plaintiff, would and did proximately result in physical and emotional distress to Plaintiff.
65. Defendant **ST. JOSEPH'S CHURCH** and their agents, servants and/or employees knew or reasonably should have known that the sexual abuse and other improper conduct would and did proximately result in physical and emotional distress to Plaintiff.

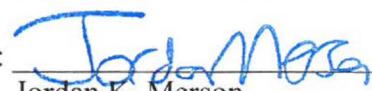
66. Defendant has the power, ability, authority and duty to intervene with and/or stop the improper conduct that resulted in Plaintiff being sexually abused by Walker.
67. Despite said knowledge, power and duty, defendant negligently failed to act so as to stop, prevent, and prohibit the improper conduct that resulted in Walker sexually abusing Plaintiff.
68. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.
69. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.
70. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
71. This action falls within exceptions to Article 16 of the C.P.L.R.

WHEREFORE, plaintiff demands judgement against defendants in such sum as a jury would find fair, adequate and just.

Dated: New York, New York
August 14, 2019

MERSON LAW, PLLC

By:



Jordan K. Merson

Attorney for Plaintiff

150 East 58th Street 34th Floor

New York, New York 10155

(212) 603-9100

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE**

Index No.: _____/19

DANIEL SMITH,

Plaintiff,
-against -

**ATTORNEY
VERIFICATION**

**DIOCESE OF BUFFALO and ST. JOSEPH'S
CHURCH**

Defendants.

-----X

JORDAN K. MERSON, an attorney duly admitted to practice in the Courts of New York State, and a member of the firm MERSON LAW, PLLC., attorneys for the plaintiffs in the within action, hereby affirms under penalty of perjury:

That he has read the within complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

That the sources of his information and knowledge are investigations and records in the file.

That the reason this verification is made by affirmant and not by the plaintiff is that the plaintiff is not within the County where the attorney has his office.

Dated: New York, New York
August 14, 2019



JORDAN K. MERSON

Index No.

Year 2019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

DANIEL SMITH,

Plaintiff,

- against -

DIOCSEE OF BUFFALO and ST. JOSEPH'S CHURCH,

Defendants,

SUMMONS AND VERIFIED COMPLAINT

Merson Law, PLLC.

Attorneys for Plaintiff(s)

Office and Post Office Address, Telephone
150 East 58th Street 34th Fl.
New York, New York 10155
(212) 603-9100

To: All Parties
